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JAN 15 1996
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January 11, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Rm 222
Washington, D.C. 20554

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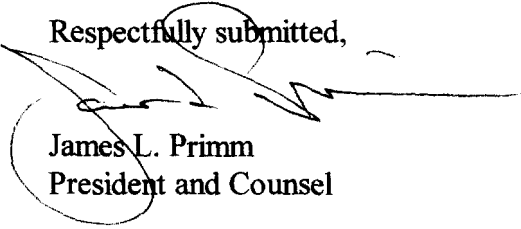
re: RM-8634
MM Docket No. 95-83

Dear Mr. Caton:

Transmitted herewith is the Reply to "Opposition to Motion to Dismiss Supplement to Reply Comments of Lee W. Shubert, Trustee" with respect to the Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Littlefield, Wolfforth and Tahoka, Texas), Notice of Proposed Rule Making, MM Docket No. 95-83, RM-8634, DA 95-1271 (June 19, 1995).

If you have any questions regarding this matter, please contact the undersigned.

Respectfully submitted,


James L. Primm
President and Counsel

Enclosure

P.S. Please Stamp and Return the attached copy so marked

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED
JUN 16 1995
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In the Matter of)	
)	MM Docket No. 95-83
Amendment of Section 73.202(b),)	RM-8634
Table of Allotments,)	
FM Broadcast Stations)	
(Littlefield, Wolfforth and Tahoka, Texas)	

TO: Chief, Allocations Branch

**Reply to "Opposition to 'Motion to Dismiss Supplement to Reply
Comments of Lee W. Shubert, Trustee'"**

21st Century Radio Ventures, Inc., ("Petitioner"), hereby respectfully submits this Reply to the "Opposition to 'Motion to Dismiss Supplement to Reply Comments of Lee W. Shubert, Trustee'", licensee of KLLL-FM, Lubbock, TX ("KLLL").

KLLL first filed "Reply Comments" in this proceeding on August, 25, 1995. Petitioner sought dismissal of such "Reply Comments" on the grounds that such comments were untimely filed (see Motion to Dismiss Comments of Lee W. Shubert Trustee, filed by Petitioner on September 26, 1995).

Then KLLL, apparently relying on Rule 1.65 of the Commission's rules, which, by KLLL's own admission applies only to applications and therefore not to rule making proceedings, sought to file additional comments. Petitioner sought dismissal of these additional unauthorized comments.

Now KLLL, in the guise of an Opposition to Petitioner's Motion to Dismiss KLLL's

last unauthorized pleading, again wishes to add additional comments to the record.

These additional unauthorized comments should be returned along with the rest of KLLL's late filed and/or unauthorized pleadings and the Commission should move to grant Petitioner's Petition so that it can expeditiously bring the first local service to Wolfforth, Texas.

KLLL Is Now Providing Comments to Proceedings Prior to Announcement of A Comment Period and Seeking to Litigate in this Proceeding the Facts of Two Other Petitions Filed in Separate Matters

KLLL now seeks to comment on two petitions filed by Petitioner in two unrelated matters in separate markets several hundred miles from KLLL's market of Lubbock, TX. It is questionable whether KLLL has standing to file such comments, but that issue need not be met at this juncture because the Commission has not even opened said petitions to a comment period.

In any event, it is fundamentally unfair to require Petitioner to litigate the facts of its other petitions in this proceeding and in the proceedings where it has appropriately brought its other petitions. (Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, Memorandum Opinion and Order, 5 FCC Rcd 7094, 7098 n. 3 (1990)"...[P]arties should not be required to litigate the specific facts of their cases in two fora.")

A Preferential Arrangement of Allotments Will Be Made Possible By A Grant of Petitioner's Petition

KLLL, in all of its late and/or unauthorized pleadings, has been unable to provide any solid reason for denying Wolfforth, TX its first local service. In the instant pleading, KLLL implies that Petitioner is guilty of "manipulation of the table of allocations" because it seeks to improve the distribution of facilities in more than one proceeding. The Commission's rules place no limitation on the number of petitions which may be filed by a single petitioner which has been lawfully granted more than one construction permit. Indeed, the Commission encourages broadcasters to seek the optimum use of spectrum by promulgating rules such as those now being utilized by Petitioner. In allocation proceedings, the Commission looks at each petition on its own merits. Id. If a proposed change in allotments will result in a preferred distribution of facilities under the Commission's FM allotment priorities and policies it will permit such a change in allocations. See Amendment of the Commission's Rule Regarding Modification of FM and TV authorizations to Specify a New Community of License, 4 FCC Rcd 4870, 66 RR 2d 827 (1989).

In the instant case, a preferential arrangement of allotments will result from a grant of Petitioner's petition to reallocate Channel 238C3 (KAIQ-FM) from Littlefield, Texas to Wolfforth, Texas and the simultaneous deletion of Channel 237A at Tahoka, TX or substitution of Channel 278A for Channel 237A at Tahoka:

- Wolfforth will be provided with its first local broadcast service.
- 216,000 more people will be served.

- Littlefield will not lose its only aural service because KZZN-AM will remain at Littlefield.

- KAIQ(FM) is not yet on the air so its removal will not delete a service upon which the public has come to rely.

- Channel 240C3 may be allocated to Littlefield if the Petition is granted. Emil Macha in his timely filed Comments to the Petition indicated that he intends to "promptly apply for Channel 240C3 if it is allotted to Littlefield and promptly build the station if his application is granted" (see Comments of Emil Macha, filed August 10, 1995, at page 3).

Of course, if the Commission determines that the above facts as set out fully in Petitioner's Petition will not result in a preferential arrangement of allotments, Petitioner is prepared, as it has always been, to construct a facility at Littlefield.

Conclusion

The Commission should expeditiously move to dismiss KLLL's "Reply Comments" , its "Supplement to Reply Comments" and its "Opposition to Motion to Dismiss Supplement to Reply Comments" and should grant the requests made by Petitioner in its Petition for Rule Making.

All statements contained herein are true and correct to the best of my knowledge and belief.

Respectfully submitted,

21st Century Radio Ventures, Inc.

By: 

DATE: January 11, 1996

James L. Primm

President and Counsel

James L. Primm
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Certificate of Service

I, Faith Branch, hereby certify that on this 11th day of January, 1996, I caused to be delivered by first class mail, postage pre-paid, copies of the foregoing Reply to Opposition to Motion to Dismiss Supplement to Reply Comments of Lee W. Shubert Trustee, to the following:

Thomas M. Clark.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037
(Attorneys for Lee W. Shubert, Trustee)

A handwritten signature in cursive script, appearing to read "Faith Branch", is written over a horizontal line.

Faith Branch